

THE THIRD BRANCH

Newsletter
of the
Federal
Courts



Vol. 41
Number 8
August 2009



Chief Justice John G. Roberts Jr. administered the oath of office to the Supreme Court's newest justice. Justice Sonia Sotomayor took the oath as her mother, Celina Sotomayor held the Bible, and her brother, Juan, stood beside her.

111th Justice Joins Supreme Court

Judge Sonia Sotomayor became the 111th Justice of the Supreme Court on August 8. Chief Justice John G. Roberts Jr. administered the Constitutional Oath to Sotomayor in a private ceremony in the Justices' Conference Room attended by members of her family. Immediately afterwards, Roberts administered the Judicial Oath in the East Conference Room before a small gathering of Sotomayor's family and friends. A formal investiture ceremony will take place on September 8,

at a special sitting of the Court.

Sotomayor was nominated by President Obama to fill the seat vacated by Justice David H. Souter. Her nomination was confirmed by the Senate on August 6, 2009.

Sotomayor has served as a federal judge since 1992, when she was appointed to the U.S. District Court for the Southern District of New York. She was elevated to the U.S. Court of Appeals for the Second Circuit in 1997. ✍️

INTERVIEW

An Interview with Justice Sandra Day O'Connor

Retired Justice Sandra Day O'Connor joined the U.S. Supreme Court in 1981. In her career, she also has been a private practitioner, an Arizona assistant attorney general, an Arizona state senator, and a county and state court judge. She retired from the Supreme Court on January 31, 2006.

Q: Since your retirement, you have dedicated much of your time to improving civic education. What prompted your concern about the state of civic education?

A: Two observations prompted my concern. First, I was concerned about the large number of verbal attacks on courts and judges. The freedom to criticize judges and other public officials is necessary to a vibrant democracy, but recent attacks have been broader and more vitriolic than any I have seen in my lifetime. My second observation was that many of these attacks stemmed from a fundamental misunderstanding of the role of the judicial branch of government. In fact, surveys show that approximately 75 percent of the public cannot distinguish the role of

See *Interview* on page 10

INSIDE

The Beginning of the U.S. Sentencing Guidelinespg. 2
Significant Decisions in the Guidelines' Historypg. 5
Mandatory Minimums Have Unintended Consequencespg. 7

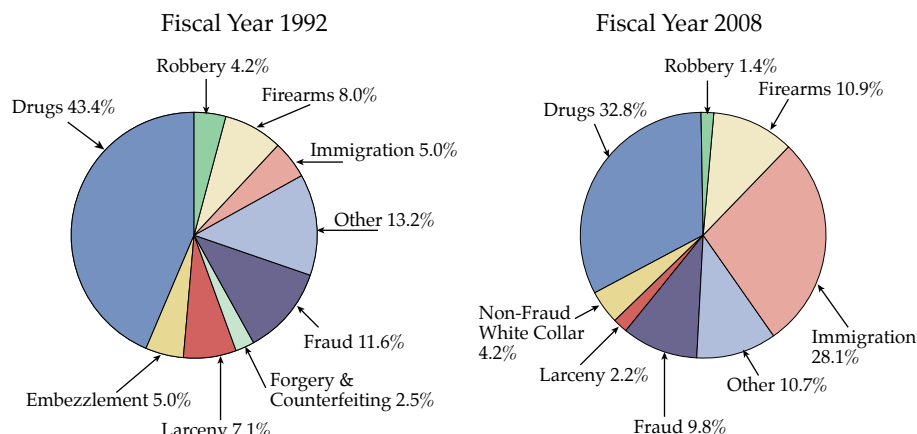
The Beginning of the U.S. Sentencing Guidelines

Twenty-five years ago, on October 12, 1984, President Ronald Reagan signed the Comprehensive Crime Control Act as part of a continuing appropriations bill. A portion of that bill, the Sentencing Reform Act of 1984, simultaneously created the U.S. Sentencing Commission, and instructed the Commission to create sentencing guidelines for the federal courts.

Many attempts had been made to pass legislation reforming federal

See Beginning on page 9

Distribution of Offenders in Each Primary Offense Category¹
Fiscal Years 1992 and 2008



¹ Of the 76,478 guideline cases in Fiscal Year 2008, 50 were excluded due to missing primary offense category. Of the 38,258 guideline cases in Fiscal Year 1992, 177 were excluded due to missing primary offense category.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSC FY08, and the 1992 Datafile, USSC FY92.

25 Years of the Sentencing Guidelines

The U.S. Sentencing Commission has had four chairs since 1984, all federal judges. Judges William Wilkins, Richard Conaboy, Diana Murphy and Ricardo Hinojosa reflect on 25 years in the development of the sentencing guidelines.

Judge William Wilkins (4th Cir. Ret.)



Judge William Wilkins was the first chair of the U.S. Sentencing Commission, serving from 1985 to 1994.

There was major resistance to the sentencing guidelines from federal

judges. District judges—and I was a district judge at the time—believed that the sentences they imposed were appropriate, or they would not have imposed them.

Historically, district judges had been accustomed to having broad discretion, and there was some resentment that Congress was trying to step in to channel that discretion. And, of course, that was exactly what Congress intended to do. The Commission was faced with a mandate from Congress. It wasn't a question of whether we *should* write guidelines. The question was, what was the format and what was the approach the Commission was going to take?

That was the first real substantive issue we had to address. We were writing on a blank piece of paper. Ultimately, we decided to write the guidelines so they would mirror the thought process a district judge took when deciding on an appropriate sentence.

For example, the judge first determines the statute that is in question and the elements of the offense. Then

the court looks to the actual facts that occurred in the individual case—exactly how a particular crime was committed, and if there were aggravating or mitigating factors involved.

Then the court moves on to the personal characteristics of the defendant, such as the role the defendant played in the commission of the crime, and whether the defendant obstructed justice, or accepted responsibility of his or her acts. Finally, the judge looks at, as do the guidelines, the criminal history of the defendant—is this a first offender or a recidivist?

I don't believe that anyone realized the enormity of this task. You're writing these mandatory guidelines with very detailed directions from Congress and the Sentencing Reform Act.

Early on, we did a quite exhaustive study of past practices, which proved to be very helpful. How were judges sentencing defendants under the discretionary system that the guidelines were replacing? What were the sentences for the various crimes?

We believed that, if we were going to change the system, we needed to know what we were changing it from.

We spent a good part of a year doing that. Then we began to use that study as a basis on which to write the guidelines. Of course, it was very labor-intensive and politically charged, which made it a difficult task.

Then we had a major challenge on our hands to convince judges that, like it or not, the guidelines were here to stay and the best thing to do was to understand and apply them fairly. This was achieved in large measure through a massive national training effort that the Commission undertook, using probation officers from all regions of the country. We would train probation officers, who would then go back to their respective areas and train their fellow probation officers. If the system was going to succeed, we had to have the full support of the probation officers and, to have that, they had to be very knowledgeable about the workings of the guidelines. Then we organized a massive training program for district court judges.

Once the guideline system was understood, the degree of acceptance greatly increased. It is the fear of the unknown that many times produces resistance. So we tried to dispel this fear through education and, over time, we changed attitudes.

And now, with advisory guidelines in place, the system is working even better. 🪵

Judge Richard Conaboy (M.D. Pa.)

Judge Richard Conaboy was chair of the U.S. Sentencing Commission from 1994 until the end of 1998.



When I became chair, the concept of the U.S. Sentencing Guidelines was just beginning to gel. The original Commission had developed the guidelines. Prior to that time, judges used their own good judgment, and they had a lot of discretion—which got to be a very big word in those days—as to what sentence would be imposed in individual cases.

Many judges throughout the country had a great difficulty imposing the same sentence on everybody, as required by the new sentencing guidelines. As a matter of fact, I think at least 200 of the district judges around the country declared that the sentencing guidelines were unconstitutional. That's what I faced when I arrived at the Commission.

I spent several years going all over the country, visiting with each district. I'd try to convince the judges that what they should be concerned with was not their discretion, but

See Conaboy on page 4

Judge Diana E. Murphy (8th Cir.)

Judge Diana E. Murphy was chair of the U.S. Sentencing Commission from 1999 to 2004.



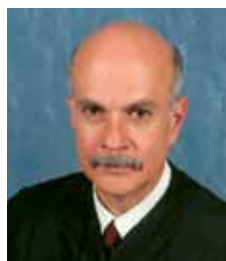
I was amazed to be asked to go on the U.S. Sentencing Commission, because years before I had been one of the first district judges to declare the guidelines unconstitutional. When the White House Counsel's Office called, I protested, "But I declared them unconstitutional!" The cool reply was, "Well, that doesn't matter."

Anyway, I understood how many judges felt about the guidelines. There were a few fans, but there was antipathy among many judges. Our Commission tried to be responsive to their concerns. We communicated when they complained. We tried to take up their concerns about changes. We had meetings, workshops, and surveys and worked closely with the Criminal Law Committee of the Judicial Conference. I would say all of that helped relationships.

Among the accomplishments of the Commission during my tenure was a 2002 cocaine report, which

See Murphy on page 4

Judge Ricardo H. Hinojosa (S.D. Tex.)



Judge Ricardo H. Hinojosa was appointed USSC chair in 2004 for a term ending October 31, 2007. He is currently acting chair of the Commission.

The Supreme Court had just decided *Blakely v. Washington* when I became chair of the Commission in 2004 and would soon decide *United States v. Booker*. It is fair to say that the *Booker* decision immediately and significantly impacted the Commission's work in carrying out all of its statutory duties under the Sentencing Reform Act of 1984.

Although making the federal sentencing guidelines advisory, *Booker* and subsequent Supreme Court caselaw reaffirmed the

relevance of the guidelines and the importance of the Commission's role. The guidelines continue to be the initial benchmark and starting point in all federal sentences. Consistent with *Booker* and subsequent caselaw, the Commission has continued its core mission to promulgate new guidelines and guideline amendments in response to congressional statutes and directives as well as input

See Hinojosa on page 4

Conaboy continued from page 3


their responsibility. There was a way, even within the guidelines, to individualize cases. I like to feel we were instrumental in softening judges' attitudes toward the guidelines.

When I arrived as chair, Congress had asked the U.S. Sentencing Commission to study and report on a very sore topic: sentences for crack cocaine were much more severe than sentences for powder cocaine. It has gotten to be known as the 100-to-1 ratio.

I asked them to delay a little bit and give my Commission time to study this 200-page report. In February, we recommended that the 100-to-1 ratio be done away with completely. Everybody agreed that the 100-to-1 ratio was too much, but there has been a dispute over the years as to what the ratio should be. I hope that legislation will change that.

It was a difficult job to design the guidelines and, with experience, they have changed often. I think the Commission has issued close to 1,000 changes in the sentencing guidelines

over the period of years. The sea change was the *Booker* case and, finally, the guidelines are advisory and not mandatory. That was a tremendous change in the way individual sentencing judges look at how they arrive at a sentence.

One time I said to a senator, "The thing I didn't like about the job of Commissioner is that it took so much time to get things done." And he said to me, "Dick, it took us 12 years to get the concept of a sentencing commission. In a democracy like ours, it takes a lot of time to do things." 

Murphy continued from page 3


is what the Supreme Court relied on in *Kimbrough* to permit judges to consider the disparity between crack and cocaine sentencing ratios in sentencing offenders. We worked hard to demonstrate that the assumptions Congress had when it created this disparity no longer had validity.

Also during my tenure, House members decided they were going to write guidelines themselves because they wanted them tougher. They wrote some guidelines on sex crimes in the PROTECT Act, which had to be tidied up to fit in a highly

calibrated guideline system in which proportionality is a big part.

We also spotted issues to which we wanted to respond. We developed an economic crimes package. We also set up an advisory group to see what incentives there were for corporations to avoid corporate crime, and another advisory group on Native American sentencing issues. We made amendments on the new drug, ecstasy; on methamphetamine manufacturing; human trafficking; intellectual property crimes; cybercrimes; terrorism; sexual predators; nuclear, biological, and chemical crimes; illegal re-entry; and also money laundering. And of course, there were always firearms

offenses. So there were about 85 amendments and many new guidelines. We were really busy.

When I arrived, we wanted to make the guidelines more flexible and user-friendly. We wanted to lighten them where appropriate, but toughen them where it was needed. I think the sentencing guidelines are still evolving. The Supreme Court's reasonableness standard at review could mean that we return to where we were before, when there were no guidelines without proportionality between sentences. One reaction being voiced in Congress is to develop more mandatory minimums. 

Hinojosa continued from page 3

and information it receives from the courts, Congress, the Executive Branch, prosecutors, federal defenders, and others interested in the federal criminal justice system.

Some thought judges would greatly alter their sentencing practices after *Booker*. In a significant majority of cases, however, judges are using their discretion to continue to sentence within the guidelines and through substantial assistance and

other government-sponsored departures. This is largely due to the fact that the guidelines reflect the process that a district judge uses in deciding an appropriate sentence. I think judges understand and appreciate that the factors they must consider under 18 U.S.C. 3553(a) are the same factors the Commission has considered under the Sentencing Reform Act in promulgating and revising the guidelines. In fact, as I have traveled around the country, judges have commented to me that, post-*Booker*,

they have a newfound respect for the guidelines and the role they play in helping them to determine an appropriate sentence.

One of the Commission's noteworthy guideline amendments during the past few years was the reduction of the crack cocaine guidelines in 2007 and the decision of the Commission, pursuant to its statutory authority, to make that reduction retroactive in 2008. Earlier Commissions spent years paving the way for such a change.

See *Hinojosa* on page 11

Significant Dates and Decisions in the History of the Sentencing Guidelines

1984	Sentencing Reform Act of 1984 Part of the Comprehensive Crime Control Act, the Sentencing Reform Act is signed into law by President Reagan on October 12, 1984.
1985	The U.S. Sentencing Commission meets for the first time in October 1985.
1987	The sentencing guidelines take effect on November 1, 1987
1989	<i>Mistretta v. United States</i>, 488 U.S. 361 (1989) The Supreme Court upholds the constitutionality of the U.S. Sentencing Commission as an independent agency in the judicial branch.
2000	<i>Apprendi v. New Jersey</i>, 530 U.S. 466 (2000) The Supreme Court held that the Sixth Amendment requires that “other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” The decision primarily affects sentences for convictions in drug cases, since the maximum penalties in those cases vary depending on the type and amount of drugs involved.
2002	<i>Ring v. Arizona</i>, 536 U.S. 584 (2002) The Supreme Court held that the Sixth Amendment right to a jury trial extends to the determination of any fact, other than a prior conviction, that increases the maximum punishment for first-degree murder from life imprisonment to death.
2004	<i>Blakely v. Washington</i>, 542 U.S. 296 (2004) The Supreme Court held that judicial application of an enhanced range under the Washington state guidelines violated the defendant’s right to a jury trial under the Sixth Amendment.
2005	<i>U.S. v. Booker</i> and <i>U.S. v. Fanfan</i>, 543 U.S. 220 (2005) The Supreme Court held in the consolidated cases of <i>U.S. v. Booker</i> and <i>U.S. v. Fanfan</i> that mandatory application of the federal sentencing guidelines violated the defendant’s right to a jury trial under the Sixth Amendment. The Court remedied the Sixth Amendment violation by making the guidelines advisory, and instructed the appellate courts to review sentences for “reasonableness.”
2007	<i>Rita v. United States</i>, 551 U.S. 338 (2007) The Supreme Court held that a court of appeals may apply a presumption of reasonableness to a district court sentence within the guidelines.
2007	<i>Gall v. United States</i>, 552 U.S. 38 (2007) The Supreme Court stated that the district court should begin all sentencing proceedings by correctly calculating the applicable guideline range. Furthermore, the Court held that courts of appeals must review all sentences—whether inside, just outside, or significantly outside the guideline range—under a deferential abuse of discretion standard.
2007	<i>Kimbrough v. United States</i>, 552 U.S. 85 (2007) The Supreme Court ruled that a district judge must include the guideline range in the array of factors warranting consideration at sentencing, but the court may consider the disparity between the guidelines’ treatment of crack and powder offenses in determining the sentence.

JUDICIAL MILESTONES

Appointed: John E. McDermott, as U.S. Magistrate Judge, U.S. District Court for the Central District of California, July 2.

Appointed: Mark A. Randon, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of Michigan, July 6.

Elevated: U.S. Court of Appeals Judge William B. Traxler, Jr., to Chief Judge, U.S. Court of Appeals for the Fourth Circuit, succeeding U.S. Court of Appeals Judge Karen J. Williams, July 9.

Elevated: U.S. District Judge Catherine D. Perry, to Chief Judge, U.S. District Court for the Eastern District of Missouri, succeeding U.S. District Judge Carol E. Jackson, June 11.

Elevated: U.S. District Judge Lonny R. Suko, to Chief Judge, U.S. District Court for the Eastern District of Washington, succeeding U.S. District Judge Robert H. Whaley, July 12.

Elevated: U.S. Bankruptcy Judge Mary D. France, to Chief Judge, U.S. Bankruptcy Court for the Middle District of Pennsylvania, succeeding U.S. Bankruptcy Judge John J. Thomas, July 29.

Elevated: U.S. Bankruptcy Judge Marvin P. Isgur, to Chief Judge, U.S. Bankruptcy Court for the Southern District of Texas, succeeding U.S. Bankruptcy Judge Wesley Wilson Steen, May 5.

Elevated: U.S. Bankruptcy Judge James M. Marlar, to Chief Judge, U.S. Bankruptcy Court for the District of Arizona, succeeding U.S. Bankruptcy Judge Redfield Baum, June 28.

Senior Status: U.S. Court of Appeals Judge Guido Calabresi, U.S. Court of Appeals for the Second Circuit, July 21.

Senior Status: U.S. Court of Appeals Judge Karen J. Williams, U.S. Court of Appeals for the Fourth Circuit, July 8.

Retired: U.S. Senior Judge Bruce W. Kauffman, U.S. District Court for the Eastern District of Pennsylvania, July 20.

Retired: U.S. Magistrate Judge Martin C. Ashman, U.S. District Court for the Northern District of Illinois, June 30.

Resigned: U.S. District Judge Samuel B. Kent, U.S. District Court for the Southern District of Texas, June 30.

Resigned: U.S. Magistrate Judge Jennifer T. Lum, U.S. District Court for the Central District of California, July 1.

Deceased: U.S. Senior Judge William C. Conner, U.S. District Court for the Southern District of New York, July 9.

Deceased: U.S. Senior Judge Robert D. Potter, U.S. District Court for the Western District of North Carolina, July 2.

Deceased: U.S. Senior Judge Allen Sharp, U.S. District Court for the Northern District of Indiana, July 10.

THE THIRD BRANCH

Published monthly by the
Administrative Office of the U.S. Courts
Office of Public Affairs
One Columbus Circle, N.E.
Washington, D.C. 20544
(202) 502-2600

Visit our Internet site at
www.uscourts.gov

DIRECTOR
James C. Duff

EDITOR-IN-CHIEF
David A. Sellers

MANAGING EDITOR
Karen E. Redmond

PRODUCTION
OmniStudio, Inc.

Please direct all inquiries and address
changes to *The Third Branch* at the
above address or to
Karen_Redmond@ao.uscourts.gov.

JUDICIAL BOXSCORE

As of August 1, 2009

Courts of Appeals

Vacancies	17
Nominees	5

District Courts

Vacancies	68
Nominees	4

Courts with "Judicial Emergencies"	25
---------------------------------------	----

Up-to-date information on judicial
vacancies is available at <http://www.uscourts.gov/judicialvac.html>

Mandatory Minimums at Heart of Unintended Consequences

Mandatory minimum sentencing has become “a blunt and inflexible tool,” said Chief Judge Julie Carnes (N.D. Ga.), chair of the Judicial Conference Committee on Criminal Law, at a House hearing last month. She told members of the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security that such sentences lack “the ability to meaningfully distinguish between serious offenders and those who are substantially less culpable.”

The subcommittee hearing topic was “Mandatory Minimums and Unintended Consequences.” Carnes provided a judicial perspective on the more than 170 federal mandatory minimum sentencing statutes now in effect.

Testifying with Carnes on mandatory minimum sentencing were Grover G. Norquist, president of Americans for Tax Reform; Michael J. Sullivan, former director of the Bureau of Alcohol, Tobacco, Firearms and Explosives; T. J. Bonner, president of the National Border Patrol Council; and Julie Stewart, president of Families Against Mandatory Minimums Foundation. Their testimony is available at http://judiciary.house.gov/hearings/hear_090714.html.

“For more than 50 years, the Judicial Conference has consistently and vigorously opposed mandatory minimum sentencing,” Carnes told the subcommittee. The Conference’s opposition derives “not from a narrow defense of a district judge’s prerogatives but from a recognition, gained through years of experience, that mandatory minimum sentencing provisions have created untenable results and that they simply do not hang together in any coherent or rational way,” she said.

Carnes noted that, because current mandatory minimum sentencing provisions “typically focus on one



Chief Judge Julie Carnes (N.D. Ga.) testified on behalf of the Judicial Conference in July on the issue of mandatory minimum sentences.


factor only, they sweep quite broadly. Therefore, a severe penalty that might be appropriate for the most egregious of offenders will likewise be required for the least culpable violator.” As an example, she cited a mandatory minimum statute that would impose a 20-year sentence not only on the kingpin who had organized and operated an extensive drug trafficking ring, but also on the manual laborer hired to off load a shipment of that kingpin’s drugs.

Although in some cases the mandatory penalty may well be appropriate, according to Carnes, in many other cases the prescribed sentence will be disproportionate to the offense that was committed. “Some of these statutes do not produce merely questionable results; instead, a few produce truly bizarre outcomes,” she said.

She cited the case of Weldon Angelos (*United States v. Angelos*), a 24-year old, first-time offender who was facing a term of six to eight years under the sentencing guidelines for his sale of marijuana

to undercover agents on three occasions. However, because the defendant brought, but did not use, a gun to two of the drug deals, and because he kept firearms at his home, prosecutors invoked a mandatory minimum statute that required the trial judge to sentence this first-offender to 55 years in prison.

Noting the corrosive effect that some mandatory minimum statutes can have, Carnes indicated that the “robotic” imposition of sentences viewed as unfair or irrational greatly undermines respect for the judicial system and undercuts the sentencing guidelines system that Congress also has created. She concluded by expressing the Judicial Conference’s support of Congress’ efforts to ameliorate the “deleterious and unintended consequences” fostered by these statutes.

Read Carnes’ full House hearing testimony at www.uscourts.gov/Press_Releases/2009/Judge-CarnesMM0714.pdf. 

GSA Design Awards Go To Six Federal Courthouses

The winners of the General Services Administration's (GSA) biennial design, art, and construction excellence awards were announced this past spring, during the 15th anniversary of the agency's Design Excellence Program. Acting GSA Administrator Paul Prouty called the award recipients "the best of the best" federal projects designed and constructed by GSA. Six federal courthouses were among the winners.

An independent 11-member jury that included landscape architects, graphic designers, historic preservationists, artists, and engineers selected the winners.

"In reviewing the many fine projects submitted, the jury looked for examples of integrated work—work that reflected not simply exceptional architecture or sustainability or construction but married design, art, and construction. These are true examples of design excellence and the foundation for creating long-term value," the jury noted.

The jury strongly supported and praised GSA's commitment to collaboration between artist and architect in integrating art into the fabric of the building through the Art in Architecture Program. The jury was particularly impressed with the exemplary design of the Wayne Lyman Morse U.S. Courthouse in Eugene, Oregon, which it described as "a model of integration."

Wayne Lyman Morse U.S. Courthouse, Eugene, Oregon

Architect: Morphosis,
Santa Monica, California

Honor Award: Architecture

Honor Award: Art in Architecture

Honor Award: Construction
Excellence

Citation: Signage



"...Here the courtrooms are the iconic elements, located in articulated pavilions that float above a two-story, glass-enclosed plinth housing office and administrative space. Their curvilinear forms refer to the fluid nature of the American judicial system—a system designed to remain flexible through ongoing challenge and reinterpretation." / *Jury*

U.S. Courthouse, Springfield, Massachusetts

Architect: Moshe Safdie and Associates,
Somerville, Massachusetts

Citation: Architecture



"In addition to serving its judicial and governmental functions, the courthouse is a catalyst for change, transforming a blighted urban site and anchoring ongoing redevelopment. Seen from the important thoroughfare, the courthouse forms a spiraling crescent around two historic trees—a copper beech and a linden, both believed to pre-date the formation of the Union." / *Jury*

U.S. Courthouse, Alpine, Texas

Architect: Pagesoutherlandpage,
LLP, Austin, Texas

Citation: Lease Construction



"This project excelled, particularly in the difficult design category of lease construction. In tiny, remote Alpine, Texas, it demonstrates the democratic nature of our government building design. It responds to its time and place, sets beautifully within the landscape, and reflects the local culture, climate, and building technologies." / *Jury*

U.S. Courthouse, Austin, Texas

Architect: Mack Scogin Merrill Elam
Architects,
Atlanta, Georgia

Citation: Architecture / On the Boards



"This 230,000-square-foot courthouse in downtown Austin will occupy a full city block directly west of Republic Square Park, a historic square that was reclaimed as a civic space in the 1970s. The square block

suggested the building's configuration as a compact, cube-like form whose stability exemplifies the strength, coherence, and dignity of the judicial system." / *Jury*

U.S. Post Office and Courthouse, Brooklyn, New York

Architect: Kliment Halsband Architects, New York, New York

Honor Award: Preservation



"A ten-year restoration effort has returned this beloved landmark to its vital role in the civic life of downtown Brooklyn. In the process, the historic structure—comprising the original 1892 courthouse and a 1933 addition—was rescued from severe deterioration and sensitively adapted and enlarged for use by the U.S. Bankruptcy Courts, the U.S. Postal Service, the U.S. Attorney's Office, and the U.S. Trustee." / *Jury*

Byron G. Rogers U.S. Courthouse, Denver, Colorado

Architect: Wagner & Grody Architects, Denver, Colorado

Citation: Modernization

"Constructed in 1965, the five-story U.S. courthouse and 18-story federal office building are notable icons in downtown Denver. In 2002, GSA initiated a four-year design and construction process to modernize this tired, but sturdy, structure. A



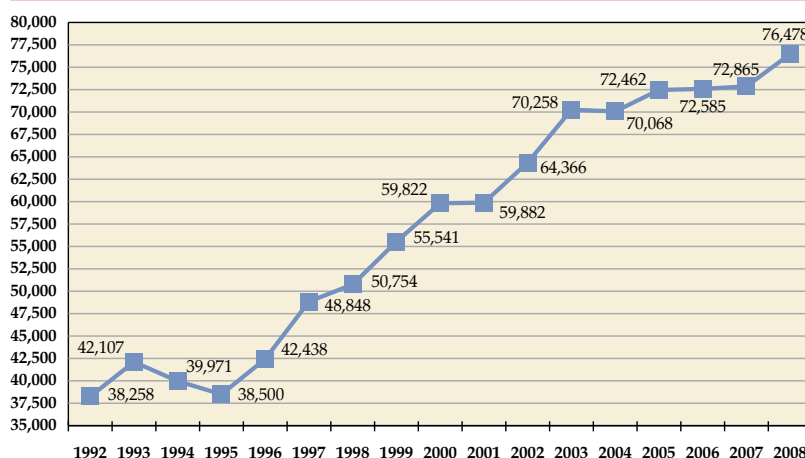
comprehensive interior renovation was planned and executed—encompassing 248,000 square feet of space and including careful integration of sustainable design features that ultimately achieved LEED Silver certification." / *Jury* 🛠️

Beginning continued from page 2

sentencing in the decade prior to the enactment of the Sentencing Reform Act. It wasn't until 1984 that Congress passed the amended Comprehensive Crime Control Act.

"Of the improvements under consideration . . . perhaps the most important are those related to sentencing criminal offenders," the Senate Report on the Comprehensive Crime Control Act of 1984 stated. "These provisions introduce a totally new and comprehensive sentencing system that is based upon a coherent philosophy. They rely upon detailed guidelines for sentencing similarly situated offenders in order to provide for a greater certainty and uniformity in sentencing."

Total Number of Offenders Sentenced Under the Guidelines Fiscal Years 1992–2008



SOURCE: U.S. Sentencing Commission Annual Report, FY1992–FY1995, U.S. Sentencing Commission Sourcebook of Federal Sentencing Statistics, FY1996–FY2008

See *Beginning* on page 12

a judge from the role of a legislator. Without basic civic education, we cannot expect to preserve or advance our system of government.

Q: How are you helping to improve civic education? Who are you trying to reach with your initiative? Please describe your initiative.

A: I founded Our Courts (www.ourcourts.org) with the help of a team of experts from Georgetown Law and Arizona State University. Our Courts is a free, interactive, on-line civics curriculum designed for middle school students.

“Without basic civic education, we cannot expect to preserve or advance our system of government.”

As any parent can attest, middle school is a time when young people are particularly interested in fairness and in challenging adult rules. We felt that this was a critical time to introduce the concepts of individual rights and civic responsibility. Our goal is to create civic learning resources that allow students to apply civics concepts to issues that affect their lives. These resources include on-line games, social networking tools, and pathways to civic participation.

Q: A goal of civic education is to provide citizens with the knowledge and skills so they can effectively participate in their government. Why is this important?

A: We are fortunate in the United States to have a stable and durable democracy. But we cannot be complacent in assuming this good fortune will continue. We must not forget that it is the citizens of our nation who must preserve and advance our system of government.

Q: Isn't it possible that the more people learn about their government and the various institutions and people running it, the less trust and confidence in its operation they will have?

A: I think the opposite is true. Lack of knowledge leads to misunderstanding and mistrust. Knowing the processes and reasoning behind government actions can help people relate to those actions, even if they disagree with them. For example, education is necessary for people to understand that unpopular opinions by the Judiciary are an unavoidable part of upholding the law. Studies illuminate this phenomenon: the more people know about the role of judges in government, the higher their opinion of individual judges' performances.

Q: More people can identify reality TV show contestants than Supreme Court justices. How do we interest young people in participating in their government?

A: A recent study found that children spend 44 hours a week using media, whether it is computers, television, video games, or music. That is more time than they spend in school or with their parents. In order to reach today's students, we need to create educational activities that use these new technologies and media. In addition, we must capture students' attention and imagination with problems that are relevant to their lives.



Justice Sandra Day O'Connor

We must show students that understanding civics will allow them to have an impact on issues that are important to them.

Q: Do you think there is an equal lack of knowledge about our three branches of government?

A: Probably. There is certainly a lack of understanding of the separation of powers between the three branches. A recent survey revealed that only about a third of people can even name the three branches of government, much less say what they do. For students, understanding the unique functions of each branch of government can help them understand how different government entities solve problems or effectuate change. Effective participation and leadership depends on understanding what entity to go to with a particular problem or idea.

Q: Do judges have a role in improving the nation's understanding of its court system? If so, what can they do? Where should they start?

A: Absolutely. There are many judges across the country already involved in civics education. For example, Arizona Chief Justice Ruth McGregor was one of the people who helped start the Our Courts project, and is also very involved in civics initiatives specific to Arizona. Judges can be involved in programs that bring students into the court-houses to meet the Judiciary and view courtroom proceedings; they can develop judicial outreach programs in the schools; and they can work with local administrators to increase the emphasis on civic education in their states and localities.

Q: Polls have shown that the public maintains a positive perception of the courts—more than for the other branches of government. Why do you think that is?

A: My guess is that it is because many judges are able to stay out of politics. Elections, and therefore politics, are imperative to the other two branches. But judges must not be influenced by political pressures. For that reason, federal judges and many state judges are appointed to the bench, and avoid the noisy and often nasty political campaigns that are somewhat unavoidable in the other two branches. Unfortunately, many states choose to elect their judges through partisan judicial elections. I think this policy is a threat to the public perception of judges as fair and independent arbiters of the law. I support the merit selection system for selection of state court judges, by which an independent commission recommends candidates for appointment to the bench by the state's governor.


Q: Justice David Souter said “The republic is lost if it is not understood.” It appears that he will be joining you in the effort to educate the public about government. Do you have plans to work together or will Justice Souter develop his own program?

A: Justice Souter is an inspirational voice for increased civic education, and I am happy that he has joined me in this cause. He has announced that he will be working to develop a civics curriculum in his home state of New Hampshire.

Q: Is the retirement of a U.S. Supreme Court Justice and the nation's preparation for a confirmation of a new justice a “teachable moment”—that is, an opportunity to heighten the public's interest in its courts?

A: There is a teachable moment anytime decisions are being made that will affect the future of our country. There are only nine justices on the U.S. Supreme Court, and they serve for life. So decisions to appoint and confirm a new justice really matter. I hope parents and educators take this opportunity to educate students on the Judiciary's constitutional role and relevance to their lives.

Q: What do you have planned, down the road?

A: In addition to sitting on circuit court cases, as is required of retired justices, I will continue to work on the issues that are important to me, including civic education and fair and independent courts. 

Judges, probation officers, federal defenders, and prosecutors have played a key role and should be commended for efficiently managing the increased caseload that retroactivity brought to the federal system.

Immediately after *Booker*, the Commission began to provide real-time data and analysis to Congress, the Executive Branch, judges, and others about federal sentencing practices and trends. I believe the Commission's real-time data helped Congress to take a deliberative approach in considering whether any statutory changes were needed in response to *Booker*. The work done by judges, probation officers, and court clerks around the country to provide the Commission with the statutorily required case documents needed to compile accurate and thorough federal sentencing data has been very helpful. The Commission has continued to work with the courts to expand their ability to receive documents electronically to facilitate the prompt receipt of the information.

The Commission throughout the years has continued its efforts to provide training to, and receive input from, the federal criminal justice community on federal sentencing issues, including application of the guidelines. The Commission enjoys a close working relationship with the Judicial Conference of the United States through its work with the Criminal Law Committee and the Administrative Office of the U.S. Courts, and also works closely with the Federal Judicial Center on matters of mutual interest. The Commission continues to visit district courts across the country to provide specialized training and forums for discussion on

See *Hinojosa* on page 12

THE THIRD BRANCH

Administrative Office of the U.S. Courts
Office of Public Affairs
One Columbus Circle, N.E.
Washington, D.C. 20544

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300

FIRST CLASS MAIL
POSTAGE & FEES
PAID
U.S. COURTS
PERMIT NO. G-18


FIRST CLASS

Hinojosa continued from page 11

federal sentencing issues. Another one of the Commission's roles has been its continued research work on federal sentencing issues. On the 25th anniversary of the enactment of the Sentencing Reform Act of 1984, the Commission is holding regional

public hearings across the country so that it can hear varied views from those involved and interested in the federal criminal justice process.

Being a judge who has sentenced many people during the 26 years I have been on the federal bench, I would say that my service on the Commission has enlightened me as to

the process and hard work every member of the Commission and its staff engages in with regards to the Commission's work, including each guideline and guideline amendment promulgated by the Commission. 

Beginning continued from page 9

"The bill as reported, meets the critical challenge of sentencing reform. The bill's sweeping provisions are designed to structure judicial sentencing discretion, eliminate indeterminate sentencing, phase out parole release, and make criminal sentencing fairer and more certain."

The U.S. Sentencing Commission held its first meeting on October 29,

1985. Its seven voting members, at least three of whom must be federal judges, serve six-year terms. Among its statutory responsibilities, the Commission establishes sentencing policies and practices for the federal courts; advises and assists Congress and the Executive Branch in the development of effective and efficient crime policy; and collects, analyzes, and distributes a broad array of information on federal crime and

sentencing issues. It also evaluates the effects of the sentencing guidelines on the criminal justice system, and recommends to Congress appropriate amendments to existing law and sentencing procedures. More on the history of the U.S. Sentencing Commission is available at www.ussc.gov. 